

AUG 13 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

William Shapiro, P.E.
Manager, Regulatory and Product Compliance
Volvo Cars of North America, LLC
Volvo Drive
Rockleigh, NJ 07647

RE: Confidentiality Determination/EA02-026

Dear Mr. Shapiro:

This is in response to your letter dated March 12, 2003, in which you request confidential treatment for the materials enclosed with your letter. These materials consist of Volvo's responses an agency information request relating to the above-referenced investigation. These responses were provided in the course of a meeting with the agency on January 24, 2003. You request confidential treatment for these materials for an unspecified period of time.

You assert that the information is considered by Volvo to be confidential. You assert also that the release of this information would compromise Volvo's position and make public Volvo vehicle specific information that could be used by your competitors.

Because the information was required to be submitted to the agency under the above matter, we reviewed your claim for confidential treatment under the test announced in National Parks & Conservation Ass'n v. Morton, 498 F.2d 763 (D.C. Cir. 1974) and its progeny. Under that test information is confidential if its disclosure is likely to cause substantial competitive harm to the submitter or to impair the government's ability to collect the information in the future.

We have reviewed the materials and your arguments including the affidavit submitted pursuant to 49 C.F.R. Part 512 and have decided to grant your request for confidential treatment in part and to deny it in part. For those materials that we have deemed to be confidential, we have determined that the materials satisfy the National Parks test. Accordingly, those materials are entitled to confidential treatment pursuant to Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), because disclosure of the

materials is likely to cause substantial competitive harm to your company or because disclosure may impair the agency's ability to obtain similar information in the future. The materials will be protected for an indefinite period of time.

We have decided to deny your request for confidential treatment for both your characterization of NHTSA's questions and your responses thereto for questions 1, 6 and 7. In addition, we are also denying your request as to the first page of the presentation material.

Question 1 and the response relate to the availability of the factory service manual for the vehicles at issue. The existence, availability, and format of the MY 2000 and 2001 service manual for the vehicles in question is information that is already in the public domain. Moreover, this material whose release is not likely to cause any competitive harm to Volvo or impair NHTSA's ability to obtain similar information in the future. Question 7 and its response relate to a general description of the S/V 40 brake system. The information presented does not, in any way, distinguish the S/V 40 brake system from the hydraulic brake systems of similar vehicles. Accordingly, the information is already in the public domain and, if released by NHTSA, not likely to cause any competitive harm to Volvo. We have also decided not to protect the cover sheet to the presentation as we have determined that the information contained in this agenda, if released, would not cause Volvo substantial competitive harm. See, National Parks.

As indicated below, we have determined that we will protect any personal identifiers contained in the response to question 7. However, we have determined that question 7 itself and the response should not be granted confidential treatment. The information contained in this question and the response would not cause Volvo substantial competitive harm if released.

I have decided to protect the responses to questions 2, 3, 4, and 5 and pages 2 through 9 of the presentation materials because the release of these materials is likely to cause substantial competitive harm to Volvo and, therefore, that this information is entitled to confidential treatment pursuant to Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4). The materials will be protected for an indefinite period of time.

I have also decided to protect the names, addresses, telephone numbers and vehicle identification numbers contained in the incident reports protection pursuant to Exemption 6 of the Freedom of information Act, 5 U.S.C. § 552(b)(6), because the release of this information would constitute a clearly unwarranted invasion of personal privacy to the persons identified.

This grant of confidential treatment is subject to certain conditions since the information for which confidentiality has been granted was submitted pursuant to a defect investigation. The information may be disclosed under the authority of 49 U.S.C. § 30167(b) and 49 C.F.R. § 512.9(a)(2), if the agency decides the disclosure will assist in carrying out the purposes of the National Traffic and Motor Vehicle Safety Act.

In addition, these materials may be disclosed under 49 C.F.R. § 512.8, based upon newly discovered or changed facts, and you must inform the agency of any changed circumstances which may affect the protection of the information (49 C.F.R. § 512.4(i)). Prior to the release of information under § 512.8 or § 512.9, you would be notified in accordance with the procedure established by our regulations.

If you disagree with this determination, you may request reconsideration. To request reconsideration, you must submit additional written justification with the certification required by 49 C.F.R. § 512.4(e) within 10 working days after your receipt of this letter. Such justification must show the particular competitive harm to your company from the disclosure of the information for which confidentiality has been denied and contain any legal arguments and citations upon which you rely (49 C.F.R. § 512.4(b)(3)). Should we receive no justification within the required period of time, the agency will be at liberty to place your submitted information in the public file.

Sincerely,

151

Otto G. Mathcke, III
Staff Attorney

